Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1952

[Docket No. T–015A]

North Carolina State Plan: Proposed Revision to State Staffing Benchmarks; Request for Comments

AGENCY: Department of Labor, Occupational Safety and Health Administration (OSHA).

ACTION: Proposed revision to State compliance staffing benchmarks; request for written comments.

SUMMARY: This document gives notice of the proposed revision of compliance staffing benchmarks (i.e., the number of compliance personnel necessary to assure a ''fully effective'' enforcement effort) applicable to the North Carolina State plan. North Carolina's benchmarks of 83 safety inspectors and 119 industrial hygienists were originally established in April 1980 in response to the U.S. Court of Appeals decision in *AFL–CIO* v. *Marshall*, 570 F. 2d 1030 (D.C. Cir. 1978), and revised on January 17, 1986 (51 FR 2481) to 50 safety inspectors and 27 industrial hygienists. The North Carolina State plan has reconsidered the information utilized in its initial revision of the State's 1980 benchmarks and determined that changes in local conditions and improved inspection data warrant further revision of its benchmarks to 64 safety inspectors and 50 industrial hygienists. OSHA is soliciting written public comments to afford interested persons an opportunity to present their views regarding whether or not the proposed revised benchmarks for North Carolina will provide the State with sufficient compliance personnel necessary to assure a ''fully effective'' enforcement effort and, consequently, should be approved.

DATES: Written comments must be received by April 11, 1995.

ADDRESSES: Written comments should be submitted, in quadruplicate, to the Docket Officer, Docket No. T–015A, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue, NW., Washington, DC 20210, (202) 219–7894.

FOR FURTHER INFORMATION CONTACT: Richard Liblong, Director, Office of Information and Consumer Affairs, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3637, 200 Constitution Avenue NW., Washington, DC 20210, (202) 219–8148.

SUPPLEMENTARY INFORMATION:

Background

Section 18 of the Occupational Safety and Health Act of 1970 (''the Act,'' 29 U.S.C. 651 *et seq*.) provides that States which desire to assume responsibility for developing and enforcing occupational safety and health standards may do so by submitting, and obtaining Federal approval of, a State plan. Section 18(c) and among these criteria is the requirement that the State's plan provide satisfactory assurances that the State agency or agencies responsible for implementing the plan have ''* * * the qualified personnel necessary for the enforcement of * * * standards,'' 29 U.S.C. 667(c)(4).

A 1978 decision of the U.S. Court of Appeals and the ensuing implementing order issued by the U.S. District Court for the District of Columbia (*AFL–CIO* v. *Marshall*, C.A. No. 74–406) interpreted this provision of the Act to require States operating approved State plans to have sufficient compliance personnel (safety inspectors and industrial hygienists) necessary to assure a ''fully effective'' enforcement effort. The Assistant Secretary of Labor for Occupational Safety and Health (the Assistant Secretary) was directed to establish ''fully effective'' compliance staffing levels, or benchmarks, for each State plan.

In 1980 OSHA submitted a Report to the Court containing these benchmarks and requiring North Carolina to allocate 83 safety and 119 health compliance personnel to conduct inspections under the plan. Attainment of the 1980 benchmark levels or subsequent revision thereto is a prerequisite for State plan final approval consideration under section 18(e) of the Act.

Both the 1978 Court Order and the 1980 Report to the Court explicitly contemplates subsequent revisions to the benchmarks in light of more current data, including State-specific information, and other relevant considerations. In August 1983, OSHA and the State plan representatives initiated a comprehensive review of the 1980 benchmark and developed a formula that each State could use to revise its benchmarks when circumstances warranted such revision. (A complete discussion of both the 1980 benchmarks and the benchmark revision process is set forth in the January 16, 1985 Federal Register (50 FR 2491) regarding the Wyoming occupational safety and health plan.)

The State of North Carolina participated in this benchmark revision process and, in September 1984, requested that the Assistant Secretary approve revised compliance staffing levels of 50 safety and 27 health compliance officers for a ''fully effective'' program responsive to the occupational safety and health needs and circumstances in the State. These revised benchmarks were approved by the Assistant Secretary on January 17, 1986 (51 FR 2481). In March 1989 the North Carolina House Appropriations Committee of the North Carolina General Assembly passed a resolution instructing the Commissioner of Labor to renegotiate the appropriate number of occupational safety and health compliance officers with OSHA. In June 1990 the State of North Carolina requested that the Assistant Secretary approve revisions to its 1984 compliance staffing benchmark levels which the State found to be more reflective of current occupational safety and health needs and circumstances within the State.

In September 1991, a catastrophic fire occurred at a poultry processing plant in North Carolina, resulting in the reinstitution of limited Federal concurrent jurisdiction and a special Federal evaluation of the State's occupational safety and health operations. The revision of North Carolina's benchmarks was suspended during this time. Significant legislative and budgetary changes were made in the North Carolina State program and, for Fiscal Year 1995, the State authorized compliance staffing of 64 safety and 51 health inspectors. The North Carolina Department of Labor has requested that the Assistant Secretary

resume consideration of State's proposed revision of its benchmarks at this time.

The North Carolina plan, which was granted initial State plan approval on February 1, 1973 (38 FR 3041), is administered by the North Carolina Department of Labor. The exercise of concurrent Federal enforcement authority was suspended in North Carolina on February 20, 1975, with the signing of an Operational Status Agreement (April 15, 1975, 40 FR 16843). Limited Federal enforcement authority was reasserted on October 14, 1991 (56 FR 55193), but it is anticipated that this authority will be suspended in the near future. The plan was certified as having satisfactorily completed all of its developmental commitments on October 5, 1976 (41 FR 43901).

Proposed Revision of Benchmarks

In June 1990, the North Carolina Department of Labor (the designated agency or ''designee'' in the State) completed, in conjunction with OSHA, a review of the compliance staffing benchmarks approved for North Carolina in 1986. In accord with the formula and general principles established by the joint Federal/State task group for the revision of the 1980 benchmarks, North Carolina reassessed the staffing necessary for a ''fully effective'' occupational safety and health program in the State. This reassessment resulted in a proposal, contained in supporting documents, of revised staffing benchmarks of 64 safety and 50 health compliance officers.

The proposed revised safety benchmark contemplates biennial general schedule inspection of all private sector manufacturing establishments with greater than 10 employees (based upon a computerized summary, by industry and size group, utilizing the 1989 Dun and Bradstreet listing of employers for North Carolina and Federal data on North Carolina's lost workday case rates for 1988) in Standard Industrial Classifications whose Lost Workday Case Injury Rate is higher than the overall State private sector rate (as determined by the Bureau of Labor Statistics' (BLS) Annual Occupational Injury and Illness Survey). The State has historically spent an average of 12.4 hours on such inspections, and each State safety inspector is able to devote 1,440 hours annually to actual inspection activity based on State personnel practices. A total of 4,870 establishments have been added to the initial general schedule safety inspection universe of 3,216 establishments based upon the State's analysis of past injury and inspection experience to identify those additional employers or groups of employers most likely to have hazards that could be eliminated by inspection. In addition, inspection resources are allocated to coverage of mobile (e.g., construction) and public employee (State and local government) work sites, response to complaints and accidents, and follow-up inspections to ascertain compliance, based upon recent historical experience and an assessment of proper safety coverage in the State of North Carolina.

The proposed revised health benchmark contemplates general schedule inspection coverage once every three years of all private sector manufacturing establishments with greater than 10 employees (based upon a computerized summary utilizing the 1984 County Business Patterns and the 1987 Dun and Bradstreet listings for North Carolina) in the 150 top high hazard Standard Industrial Classifications (SICs) in the State having the highest likelihood of exposure of health hazards. These SICs are determined by a health ranking system utilizing data from the National Occupational Hazards Survey (NOHS), as published in 1977, which assesses the potency and toxicity of substances in use in the State. The State has historically spent an average 31.85 hours on such inspections, and each health compliance officer is able to devote 1,504 hours annually to actual inspection activity, based upon State personnel practices. A total of 2,955 establishments have been added to the initial general schedule health inspection universe of 2,028 establishments based upon the State's knowledge gained from inspection experience and other data on the extent of employee exposure to and use of toxic substances and harmful physical agents by individual employers or groups of employers, and the extent to which hazardous exposures can be eliminated by inspection. In addition, inspection resources are allocated to coverage of mobile and public employee (State and local government) work sites, response to complaints and accidents, and follow-up inspections to ascertain compliance, based on recent historical experience and an assessment of proper health coverage in the State of North Carolina.

OSHA has reviewed the State's proposed revised benchmarks and supporting documentation, prepared a narrative describing the State's submission, and determined that the proposed compliance staffing levels appear to meet the requirements of the Court in *AFL–CIO* v. *Marshall* and provide for compliance staff sufficient to ensure a ''fully effective enforcement program.''

Effect of Benchmark Revision

Consistent with the 1978 Court Order in *AFL–CIO* v. *Marshall* and the procedures for implementation of benchmarks described by OSHA in the 1980 Report to the Court, if the proposed revised benchmarks are approved by OSHA, the State must allocate a sufficient number of safety and health enforcement staff to meet the revised benchmarks in order to receive final approval under section 18(e) of the Act. The proposed revised benchmarks of 64 safety and 50 health compliance officers meet North Carolina's Fiscal Year 1995 allocated compliance positions of 64 safety and 51 health officers. (Of those allocated positions, 30 safety and 40 health inspectors are completely funded by the State; the remainder are funded on a 50/50 basis with State and Federal funds.) OSHA does not anticipate any significant increase in its appropriations whereby it would be able to provide 50 percent Federal funding for North Carolina to meet its proposed revised staffing benchmarks.) Approval of the revised benchmarks would be accompanied by an amendment to 29 CFR part 1952, Subpart I, which generally describes the North Carolina plan and sets forth the State's revised safety and health benchmark levels.

Documents of Record

A comprehensive document containing the proposed revision to North Carolina's benchmarks, including a narrative of the State's submission and supporting statistical data has been made a part of the record in this proceeding and is available for public inspection and copying at the following locations:

Docket Office, Docket No. T–015A, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue NE., Washington, D.C. 20210.

Regional Administrator—Region IV, U.S. Department of Labor, OSHA, 1371 Peachtree Street NE., Atlanta, Georgia 30367.

North Carolina Department of Labor, 319 Chapanoke Road, Raleigh, North Carolina 27603.

In addition, to facilitate informed public comment, an informational record has been established in a separate docket (No. T–018) containing background information relevant to the benchmark issue in general and the current benchmark revision process. This information docket includes, among other material, the 1978 Court of Appeals decision in *AFL–CIO* v.

Marshall, the 1978 implementing Court Order, the 1980 Report to the Court, and a report describing the 1983–1984 benchmark revision process. Docket Number T–018 is available for public inspection and copying at the Docket Office of the U.S. Department of Labor, Room N–2625.

Public Participation

OSHA is soliciting public participation in its consideration of the approval of the revised North Carolina benchmarks to assure that all relevant information, views, data and arguments are available to the Assistant Secretary during this proceeding. Members of the public are invited to submit written comments in relation to whether the proposed revised benchmarks will provide for a fully effective enforcement program for North Carolina in accordance with the Court Order in *AFL–CIO* v. *Marshall*. Comments must be received on or before April 11, 1995, and be submitted in quadruplicate to the Docket Office, Docket No. T–015A, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue, N.W., Washington, D.C. 20210. Written submissions must be directed to the specific benchmarks proposed for North Carolina and must clearly identify the issues which are addressed and the positions taken with respect to each issue.

All written submissions as well as other information gathered by OSHA will be considered in any action taken. The record of this proceeding, including written comments and all material submitted in response to this notice, will be made available for public inspection and copying in the Docket Office, Room N–2625, at the previously mentioned address, between the hours of 8:15 a.m. and 4:45 p.m.

List of Subjects in 29 CFR Part 1952

Intergovernmental relations, Law enforcement, Occupational safety and health.

(Sec. 18, 84 Stat. 1608 (29 U.S.C. 667); 29 CFR part 1902, Secretary of Labor's Order No. 1–90 (55 FR 9033))

Signed at Washington, DC, this 28th day of February 1995.

Joseph A. Dear,

Assistant Secretary of Labor.

[FR Doc. 95–5503 Filed 3–6–95; 8:45 am]

BILLING CODE 4510–26–M

POSTAL SERVICE

39 CFR Part 111

Special Bulk Third-Class Eligibility Restrictions

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: This proposed rule implements provisions of Public Laws 103–123 and 103–329, the Treasury, Postal Service, and General Government Appropriations Acts for 1994 and 1995, respectively. The proposed rule is necessary to clarify and implement further restrictions on the use of special bulk third-class rates.

DATES: Comments must be received on or before April 6, 1995.

ADDRESSES: Written comments should be mailed or delivered to Manager, Mailing Standards, USPS Headquarters, 475 L'Enfant Plaza SW., Washington, DC 20260–2419. Copies of all written comments will be available for inspection and photocopying from 9 a.m. to 4 p.m., Monday through Friday, in Room 6800 at the above address.

FOR FURTHER INFORMATION CONTACT: Ernest J. Collins, (202) 268–5316.

SUPPLEMENTARY INFORMATION: On October 28, 1993, the President signed into law Public Law 103–123, the Treasury, Postal Service, and General Government Appropriations Act for 1994. Title VII of the Act, the Revenue Forgone Reform Act, amended 39 U.S.C. 3626 by adding provisions to subsections (j) and new subsection (m) (1993 amendments). These sections add further restrictions on the use of special bulk third-class postage rates by qualified organizations. Specifically, the law makes certain types of advertisements, promotions, and offers, as well as some products, ineligible to be mailed at the special bulk third-class rates. The final rule implementing the new statutory restrictions was published by the Postal Service on May 5, 1994, with an implementation date of September 4, 1994. It was subsequently delayed indefinitely by notice in the Federal Register (59 FR 39967) on August 5, 1994.

On September 30, 1994, the President signed into law Public Law 103–329, the Treasury, Postal Service, and General Government Appropriations Act for 1995 (1994 amendment), amending provisions of Public Law 103–123. The amendment creates an exception to the 1993 amendments for advertisements printed in materials that meet the content requirements for periodical publications as prescribed by the Postal Service.

The 1993 amendments established new content-based restrictions on matter eligible for special bulk third-class rates. In order for material that advertises, promotes, offers, or, for a fee or consideration, recommends, describes, or announces the availability of any product or service to qualify for mailing at the special bulk third-class rates, the sale of the product or the providing of the service must be substantially related to the exercise or performance by the organization of one or more of the purposes constituting the basis for the organization's authorization to mail at such rates. The determination whether a product or service is substantially related to an organization's purpose is to be made in accordance with standards established under the Internal Revenue Code. The amendments also added restrictions on the mailing of products at the special bulk third-class rates.

The 1994 amendment provides that advertisements mailed at the special bulk third-class rates need not meet the substantially related test if the material of which the advertisement is a part meets the content requirements of a periodical publication, as specified by the Postal Service. The 1994 amendment does not affect the restrictions on the mailing of products established in the 1993 amendments.

This proposal republishes for comment the rules adopted on May 5, 1994, with certain changes. The major change is the addition of new sections E370.5.4(d)(2) and 5.8 of the Domestic Mail Manual (DMM) that implement the new exception to the restrictions in the 1993 amendments. Specifically, the new rule provides that the 1993 amendments do not apply to advertisements for products or services that appear in third-class material meeting the content requirements for periodical publications. These content requirements are listed in DMM E370.5.8.

Other changes from the rules published May 5, 1994, include the following. Several sections in the DMM have been renumbered to accommodate the addition of new DMM E370.5.8; section 5.7(c) has been deleted. This provision excluded certain material in newsletters and other publications from the new advertising restrictions. Because the publications that were intended to benefit from the provision are among those that are expected to benefit from the new 1994 exception, this section has been deleted as unnecessary and potentially confusing. Products and services advertised in materials meeting the content requirements for a periodical